

## **PART 5800—NONPROCUREMENT DEBARMENT AND SUSPENSION**

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**AUTHORITY:** Sec. 2455, Pub. L. 103-355, 108; Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549; (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3); CFR, 1989 Comp., p. 235).

**SOURCE:** 75 FR 41692, July 19, 2010, unless otherwise noted.

#### **§ 5800.10 What does this part do?**

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180,

as supplemented by this part, as the U.S. Election Assistance Commission (“the Commission” or “EAC”) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Commission to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” and 31 U.S.C. 6101 note.

#### **§ 5800.20 Does this part apply to me?**

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a Commission suspension or debarment action;

(c) Commission debarment or suspension official; or

(d) Commission grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

#### **§ 5800.30 What policies and procedures must I follow?**

The Commission policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § \_\_\_\_\_.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Commission policies and procedures are those in the OMB guidance.

### Subpart A—General

**§ 5800.137 Who at the Commission may grant an exception to let an excluded person participate in a covered transaction?**

The Commission's Contracting Officer has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

### Subpart B—Covered Transactions

**§ 5800.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Pursuant to 2 CFR 180.220(c), the Commission extends coverage of non-procurement suspension and debarment requirements beyond first-tier procurement contracts to include any subcontract to be funded by the Commission, the value of which is expected to equal to or exceed \$25,000 or 30 percent of the value of first-tier transaction, whichever is lesser.

### Subpart C—Responsibilities of Participants Regarding Transactions

**§ 5800.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

If a lower-tier transaction is covered pursuant to § 5800.220, you as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180.

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

**§ 5800.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires

the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

**§ 5800.765 May I ask the suspending official to reconsider a decision to suspend me?**

Yes. Within 30 days of receiving a final notice of suspension, you may make a written request for the suspending official to reconsider your suspension.

**§ 5800.875 May I ask the debarring official to reconsider a decision to debar me?**

Yes. Within 30 days of receiving a final notice of debarment, you may make a written request for the debarring official to reconsider your debarment pursuant to § 5800.880. The disposition of your request for reconsideration; or the result of your appeal; shall be considered a final agency action.

**§ 5800.880 What factors may influence the debarring official during reconsideration?**

The debarring official may reduce or terminate your debarment based on:

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

**§ 5800.890 How may I appeal my debarment?**

(a) If the Commission debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under § 180.815, you may ask for review of the debarring official's decision in two ways:

- (1) You may ask the debarring official under § 875 to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

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(2) You may request a review by the EAC's debarment appeals body (DAP), which is composed of the Executive Director, Chief Financial Officer, and Chief Operating Officer. The DAP will review your appeal and make a determination on whether to sustain or reverse the decision of the debarring official. The DAP will then make a recommendation to the EAC Commissioners who will vote by circulation on whether to accept or reject the recommendation of the DAP. A request to review the debarring official's decision to debar you must be made within 30 days of your receipt of the debarring official's decision under § 180.870 or paragraph (a)(1) of this section. However, the DAP may recommend to the EAC Commissioners that the debarring official's decision be reversed, based on a majority vote of the DAP, only where the DAP finds that the decision is based on a clear error of material fact or law, or where DAP finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the debarring official's decision without requesting reconsideration, or you may appeal the decision of the debarring official on reconsideration.

(b) A request for review under this section must be in writing; prominently state on the envelope or other cover and at the top of the first page "Debarment Appeal;" state the specific findings you believe to be in error; and include the reasons or legal bases for your position. The appeal request should be delivered or addressed to the U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

(c) After the circulation vote of the EAC Commissioners has been certified, either the Commission debarring offi-

cial or the DAP must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

(d) [Reserved]

(e) Nothing in this part prohibits the EAC from delegating the appeal review process to another Federal agency through a memorandum of understanding or interagency agreement.

### Subparts E—H [Reserved]

#### Subpart I—Definitions

##### § 5800.930 Debarring official.

For the Commission, the debarring official for all nonprocurement transactions is the Commission's Contracting Officer. In the case of a vacancy in the position of the Contracting Officer, the alternate debarring official is the Chief Financial Officer.

##### § 5800.970 Nonprocurement transaction.

While the Commission treats all payments made to states under 42 U.S.C. 15301, 15302 and 15401 as grants, this part does not apply to grants made to states and political subdivisions therein.

##### § 5800.1010 Suspending official.

For the Commission, the debarring official for all nonprocurement transactions is the Commission's Contracting Officer. In the case of a vacancy in the position of the Contracting Officer, the alternate debarring official is the Chief Financial Officer.

### Subpart J [Reserved]